

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON FISH, WILDLIFE AND PARKS**

**Call to Order:** By **VICE CHAIRMAN JOE BALYEAT**, on March 22, 2001  
at 3 P.M., in Room 152 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Joe Balyeat, Vice Chairman (R)  
Rep. George Golie, Vice Chairman (D)  
Rep. Keith Bales (R)  
Rep. Debby Barrett (R)  
Rep. Paul Clark (D)  
Rep. Ronald Devlin (R)  
Rep. Nancy Fritz (D)  
Rep. Steven Gallus (D)  
Rep. Gail Gutsche (D)  
Rep. Larry Jent (D)  
Rep. Diane Rice (R)  
Rep. Rick Ripley (R)  
Rep. Allen Rome (R)  
Rep. Jim Shockley (R)  
Rep. Donald Steinbeisser (R)  
Rep. Bill Thomas (R)  
Rep. Brett Tramelli (D)

**Members Excused:** Rep. Daniel Fuchs, Chairman (R)  
Rep. Jeff Laszloffy (R)  
Rep. Tom Facey (D)

**Members Absent:** None.

**Staff Present:** Linda Keim, Committee Secretary  
Doug Sternberg, Legislative Branch

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 163, 3/20/2001; SB 437,  
3/20/2001

Executive Action: HB 634

HEARING ON SB 163

Sponsor: SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER

Proponents: Former Representative Chase Hibbard, Governor's  
Wolf Management Advisory Council, Montana  
Woolgrowers Association  
Jeff Hagener, Fish, Wildlife and Parks  
Jack Wiseman, Department of Livestock  
Janet Ellis, Montana Audubon Society  
Lorna Karn, Montana Farm Bureau Federation  
Steve Pilcher, Montana Stockgrowers Association

Opponents: Stan Frasier, Helena Hunters and Anglers

Informational Witnesses:

Bill Hoppe, Gardiner, Self and Friend of Northern  
Yellowstone Elk (FNYE)

Bob Fanning, Pray, FNYE

Mike Barrett, Self - Testimony was not relevant to  
the bill and is not included in the minutes

Opening Statement by Sponsor:

SENATOR LORENTS GROSFIELD, SD 13, BIG TIMBER said that SB 163 will reclassify certain species for management purposes. The purpose is to increase the state's ability to maintain or regain management authority rather than having the federal government step in. This bill concerns three endangered species; the wolf, the grizzly bear and the lynx. We are modifying our state statutes for each of those species in ways that will help accomplish the delisting of these three species. In December 1999 Governor Racicot, along with the Governors of Idaho and Wyoming signed a memorandum of understanding dealing with grizzly bears in the Yellowstone ecosystem. The memo says that timely recovery and delisting of the Yellowstone grizzly bear population under the federal endangered species act serves the best interests of the citizens of Montana, Idaho and Wyoming. Successful management of the grizzly bears requires a management plan in place in the area where the population is. If there is no plan, they cannot be delisted. The U.S. Fish and Wildlife Service published a conservation strategy regarding the grizzly bear in the Yellowstone area. Species do not get off the endangered species list unless they are recovered. A recovered population is one that has a high probability of existence into the foreseeable future; 100 years or more. There also are five specific conditions from the federal endangered species act, section 4 A1. These are: 1) that the present or threatened

destruction, alteration, or curtailment of its habitat or range are taken care of, 2) that there is not a probability of over-utilization of the species for commercial, recreational, scientific or educational purposes, 3) that there is not a huge disease or predation problem, 4) that there is not an inadequacy of existing regulatory mechanisms, 5) that there are no other problems that would affect and preclude the probability of the population's continued existence. This bill is about #4; the inadequacy of existing regulatory mechanisms. Conservation strategy for the grizzly bear states that we have to modify one of our laws before they will consider delisting the grizzly bear. It is the same sort of an issue with the wolves. After the memo of understanding with the three Governors was written, they put together a round table and each appointed five members. They came up with some unanimous recommendations, with the primary goal of preventing re-listing. 1) Must have regional approach and must have cooperation with the regulatory mechanisms in the area such as FWP in order to have a management plan. 2) Grizzly bears must be managed under state developed management plans that would include participation by interested persons from around the area. It is the same issue with the wolf. Without legislation such as this and without the commitment by the three state agencies, delisting will not happen.

**Proponents' Testimony:**

**Former Representative Chase Hibbard, Rancher, Stockgrower, Governor's Wolf Management Advisory Council and the Montana Woolgrowers Association** said the endangered species act was passed in 1973. In order to speed up the wolf recovery process so they can be delisted and come under state management, discussion began about creating an experimental non-essential population in the Yellowstone area and in central Idaho. The trade off was that by creation of that classification, it allowed more flexibility in management in return for introducing wolves, rather than allowing them to re-populate their former range at a slower pace. We are now on the threshold of recoverable numbers. In order for them to be recovered, three things have to happen: 1) There have to be 30 breeding pairs for three consecutive years in Montana, Idaho and Wyoming. A breeding pair is defined as an adult male, an adult female, and two pups surviving until 12/31 of the year. That can vary from seven to 27. In February there were 63 wolves in northwest Montana, or five breeding pairs. In the greater Yellowstone area there were 164 wolves, or 12 pairs. In central Idaho there were 185 wolves, or nine pairs. This is a total of 412 wolves and 26 breeding pairs. The averages are from 12 to 20 wolves per pair. We are currently about four breeding pair short of achieving the recoverable number of 30 that has to be maintained for three consecutive years. The soonest we could

meet this criteria of delisting would be four years. 2) Montana, Idaho and Wyoming have to have management plans in place. That was the genesis of the Governor's Wolf Advisory Council which was appointed April 2000 by Governor Racicot. Their extensive recommendations covered public interest, public safety, maintaining viable wildlife populations, and protecting the livestock industry. As wolf numbers increase, so does the flexibility in dealing with wolves, including kill permits given to livestock owners, hunting seasons for the general public, and possible trapping seasons also. 3) Changes need to be made to Montana legislation. Basic things that need to occur are 1) Removal from state classification of threatened or endangered, at the same time that it meets federal standards, 2) Removal from predator classification to a species in need of management, 3) Allowing the Department of Livestock to do the actual wolf control work, similar to what they do now with coyotes.

**Jeff Hagener, Fish, Wildlife and Parks (FWP)** presented written testimony to the committee, **EXHIBIT(fih65a01)**. He said this is the first step to put in place a statutory mechanism that will be required for wolf delisting and for FWP to continue management of grizzly bears, wolves and lynx after they are delisted. There will be a cost connected to the management when FWP takes it over. His testimony indicates that Idaho and Wyoming legislators are sending resolutions to congress to establish a trust fund just for management. FWP asks that we get letters out from the committee to congress and congressional people they have been working with to establish that trust fund, so the burden of cost doesn't come back to the state.

**Jack Wiseman, Department of Livestock** said they realize that in order to delist the wolf and for Montana to be able to manage the species, it must be taken off the predator list.

**Janet Ellis, Montana Audubon Society** said you've heard that the wolf will become a species in need of management. She said that grizzly bears will be classified and managed like game animals, and lynx are classified as fur bearers.

**Lorna Karn, Montana Farm Bureau Federation** said they participated in the advisory committee and are in support of SB 163.

**Steve Pilcher, Montana Stockgrowers** said they support SB 163 as amended in the Senate. Predators spark controversy and emotion with ranchers. Lots of people have opinions about grizzly bears and wolves, but few will suffer a financial loss due to their presence. Every time a grizzly bear or a wolf kills a calf, it takes \$500 out of a rancher's pocket. They have been monitoring the advisory council's progress and Montana Stockgrowers realizes

they have to look to the future. The key is for Montana to get into position to manage these very important species. This is an important step toward the point where the rancher has the ability to respond and protect property rights in those instances where a wolf or a grizzly bear is causing depredation within his herd.

### **Opponents' Testimony:**

**Stan Frasier, Helena Hunters and Anglers** said he is not opposed to the fundamental purpose of SB 163. He is opposed to the idea of letting the Department of Livestock manage wildlife. Several sessions ago they were given the authority to manage the bison down by Yellowstone. The result of that has been world wide ridicule because of mis-management. He would like to have the bill amended to keep the management of wildlife under FWP.

### **Informational Witnesses:**

**Bill Hoppe, Gardiner, representing himself** said his testimony is neither for nor against SB 163; he is here to present information to digest. He has lived in the upper Yellowstone valley near Gardiner for 50 years and his family has lived there over 100 years. He now carries the guilt of losing the business that has been in his family for over 100 years because of a non-essential experiment forced on him by the federal government. He wants the whole story to be known. Yellowstone Park is the incubator for this expensive project, and Montana will always feel the effects from its overflow. Pets and livestock he raises are being killed or threatened and he has no control over it. Those living closest to the park feel the pain first, but it is spreading. He lives next to the Druid pack which is currently at 27 wolves. It may have as many as four females that will give birth this spring, and they expect the pack size to double. The greater Yellowstone elk herd is on the decline and our resident Montana elk are being devastated. The moose population is almost to a point of no return. The latest sheep count is only 40 head, down from 300 head only 15 years ago. Antelope are down to only 100. These numbers point to things like disease, the fire of 1988, weather, and over-hunting as the cause. Biologists and researchers do not admit that the wolves have any effect on these animals. We just keep hearing that we need to finance more studies. FWP is proposing a 2-3 year study on wolf predation. The world's top wolf biologists have had 20 years of research already, and he feels there is nothing more to learn. He has documents from three of the top wolf biologists in the world, and said the program has become a political chess match. We are down to changing words in our state laws so that we can gain some kind of control. He advised the committee to be very careful in making deals with the devil. He listed questions for the committee to

consider: "A predator is a predator is a predator, wolves are known world-wide as just that. Why do we find it necessary to classify them as something that they are not?" Why are we wasting our time appeasing our enemy who has dealt in bad faith for over a decade? Is taking wolves off the predator list going to come back to haunt us? Is it going to take any other options away for the future? The situation is critical, we don't have time for any more studies or any more games. It is time for the state of Montana to pass legislation to petition the Secretary of the Interior to allow the state to regain immediate control of this problem. The Sheep Mountain pack raised 16 pups in two years but was not considered a breeding pair. There are now 16 packs of wolves in the greater Yellowstone area. He said that he does not think the goal of 30 packs raising two pups for three consecutive years can be attained.

**Bob Fanning, Chairman of Friends of the Northern Yellowstone Elk Herd** said they have 3,500 members and have been in existence for two years. He said they are petitioning the Secretary of the Interior directly because as they read the endangered species act they as a group, state agencies and interested parties have the authority to petition directly to the Secretary of the Interior and the Secretary of Commerce. Our Governor has the power to petition a session of the seven member endangered species committee for immediate relief from this wolf problem. The truth is that we really don't know exactly how many wolves are out there. He said that he delivered this same information to the Idaho House of Representatives several weeks ago, and in a vote of 68-2 they passed HJM 5 calling for the immediate removal of all wolves in Idaho. His group has spent thousands of hours in the mountains and they are committed to educating Montana citizens, the legislature and the Governor about this federal program that is causing irreparable harm. Their member's observations in the field are supported by the life-long scientific work of their organization's three PhD's and other scientific papers by specialists in predator/prey problems. They have witnessed the 19,500 northern Yellowstone elk herd being cut in half in the last five years. Evidence of this can be seen by the lack of calf elk, spikes or young males and the rapidly increasing age of the herd in general. The biological issue they were formed over is called "recruitment" and that is bringing the new babies into the picture to replace the hunted and the aged. They are not replacing an aging elk herd, because of a wolf instinct called surplus killing where new born elk calves are wantonly destroyed by wolves shortly after birth. Other prey species are in as much if not more peril. The people of the tri-state area, Montana, Wyoming and Idaho opposed wolf reintroduction in 1995. As a result of this, the wolf received a designation of experimental and nonessential. The people of the tri-state area allowed this experiment that was defined in a

study commissioned in 1988. It is documented in a book called "Wolves for Yellowstone", a report to Congress, the Senate, and the Department of the Interior. As a provision to this being allowed to go forward, Congress promised that the local economies would not be hurt, that big game hunting should not be affected, and that grizzly bears would not be impacted. A group of biologists, the Delphi 15, was appointed by Congress and the Department of the Interior to examine whether this experiment should continue. Their findings were that wolf introduction could go forward at a 10-20 year pace, and the 250 square miles that we call the greater Yellowstone ecosystem could hold 78-100 wolves at full capacity. They also recommended intensive monitoring of all the prey species because the biological impact of this experiment could not be predicted with absolute certainty. According to published reports, we now have 100 wolves in northwest Montana, 220 in central Idaho, and 85 in the greater Yellowstone ecosystem. This is many more times than promised, and this experiment is clearly out of control. About 505 wolves eating a bio-mass of at least 25 elk per year, as Yellowstone National Park reported in the Livingston Enterprise 12/20/99 is 12,625 elk lost per year to the wolf eating program. That is exclusive of calves that are killed in the springtime. Montana FWP gave great thought in calculating restitution for illegally taken game. They placed \$1,000 value on cow elk and \$8,000 value on bull elk, based on the loss of revenue to the state and its hunting industry. Using these figures, the tri-states, their economies and hunting industries are losing between \$12.6 million and \$101 million to a program that Congress instructed not to hurt the local economy or hunting. Can a program that breeched the public trust be allowed to exclusively manage, audit and control wildlife issues? What is the objective of wolf introduction; a) To put elk into a predation pit and hold those numbers down for a decade in order to re-vegetate Yellowstone National Park. b) To perpetuate indefinitely a bureaucracy that was designed to self destruct after 100 wolves were introduced. c) To end big game hunting. d) To over throw the Taylor Grazing Act by driving ranchers off public lands. E) To launch the United Nations wild land project, especially that portion called the Yellowstone Yukon Corridor. If this new agenda is the will of the American public, it needs to be put before the public in a vote. Mike Phillips, the biologist who introduced the wolf into Yellowstone National Park in 1995 spoke to 800 people from 26 countries in Duluth on 2/24/2000. He said the goal of wolf introduction was to drive ranchers from public lands. This is not only in violation of the endangered species act itself, but also a violation of the fifth amendment of the constitution and its "taking" clause. Wolf control is nothing more than adherence with the original contract. Outside scientific review of this program is necessary and they ask for a meeting of all the pertinent legislators involved. The benefit

to Montana by circumventing the U.S. Fish and Wildlife Service's plan to delist is immediate and the possible opening of a debate that was closed in 1994 when Congress left open-ended the issue of who would pay for wolf control. He asks that SB 163 be presented to Ed Bartlett and Mike McGrath and ask them to make sure that Montana is not compromising its options to petition directly at a later date.

**Mike Barrett, self**, presented testimony that was not relevant to the issue and the testimony was not included.

**Questions from Committee Members and Responses:**

**REP. RICE** asked about page 6, section 7, "Regulations to manage nongame wildlife". This looks very similar to another bill we have pending which we objected to because we did not receive a whole list of the animals that were to be dealt with. Is this the same? **Janet Ellis, Montana Audubon** said no, that is SB 431. It is a new section of law, it does not amend the "in need of management section". It deals with commercial use of nongame and is a separate section of law. **REP. RICE** asked about line 9-10, "limitations relating to taking, possession, transportation, exportation, processing, sale or offer for sale, or shipment necessary to manage nongame wildlife. Isn't that commercial use? **Janet Ellis** said the only way you can manage nongame wildlife is to have extensive population studies and declare an animal a nongame animal in need of management. The bill that was before you on commercialization does not require that, it just says that you can regulate commercial sales of nongame animals. It doesn't require the extensive efforts to determine the status of the species in this section.

**{Tape : 1; Side : B}**

**REP. RIPLEY** said there was some discrepancy on the number of breeding pairs and head counts on wolves. How would the number of wolves or grizzly bears in the system be verified? **Chase Hibbard** said he was quoting from U. S. Fish and Wildlife Service numbers. **Bob Fanning** had some different numbers, and he would not quarrel with either one. From his observation as a layman, it is not an exact science. If this legislation is passed and the wolf is delisted, our plan recommends that we use packs instead of breeding pairs. Packs are much easier to track, it doesn't require the preciseness in determining the survival for the year. He said it is more economical and more efficient. **REP. RIPLEY** asked where they could get a copy of the management plan. **Chase Hibbard** said the plan is in draft form now. The recommendation is a public document and is on FWP's web site.



**REP. GALLUS** said that wolves still are predatory animals, even if they are reclassified. They won't stop killing other animals or livestock. Isn't that true? **Chase Hibbard** said the legal definition of predator is standing in the way of the delisting. He said that their recommended plan has more opportunities for control by a broader spectrum of the public than currently exists. They still will be treated as predators that prey on livestock and have potential to prey on domestic dogs and that the public feels threatened by. There are adequate measures in the recommendations to address all those points, and lethal take is one of them. **REP. GALLUS** said there are two theories when it comes to predatory animals. Some theorize that predatory animals will take down other animals for fun and waste, others theorize that predatory animals only take down other animals for food, that they only kill the weakest members of that species. What do you believe? **Chase Hibbard** said the idea has been around for a long time that the more efficient animals take only the weak and the sick. But, as a rancher in the sheep business, who suffered severe coyote predation years ago and still has considerable predation, he has personally seen predators take healthy animals.

**REP. CLARK** asked if there was any sound biological data to determine the current and projected 50 year impact of the wolves located in Yellowstone Park. **Glenn Erickson, Fish, Wildlife and Parks Commission** said they do not have complete records for that specific population, but there is adequate data to make some judgements. Current surveys on elk in that population show 13,400 elk on 12/21/2000. That is 7.8% fewer than last year. It is 10-15% below the record high of 19,000 the previous year. Back in the 1970's that herd was about 11,000. With wolves in that population we will see impacts, both on the native herds, as well as the northern Yellowstone elk herd. He said he does not know what the projected 50 year impact is. **REP. CLARK** asked what the optimum carrying capacity is. **Glenn Erickson** asked if he meant with wolves present. **REP. CLARK** said we are trying to determine whether this will be a major catastrophe into the future or if we can find some equilibrium. He is wondering if it is still above what the recommended carrying capacity was for that ecosystem. **Glenn Erickson** said previous projections were 11,000-12,000 elk; there were 13,400 on our last survey. This is above the equilibriums projected without wolves present. **REP. CLARK** asked if there is a clear understanding in this proposal about what the different responsibilities would be between FWP and the Department of Livestock. **Glenn Erickson** said they have a cooperative agreement with Department of Livestock, as well as FWP and the United States Department of Agriculture (USDA). Under that agreement they work cooperatively on a predator control program. Funding from the department is dedicated to managing and controlling predators for wildlife purposes.

Actions are coordinated so they don't duplicate each other and so they fully fund the predator control program. **REP. CLARK** asked who the wolves in the park belong to; they aren't Montana or Idaho wildlife? **Glenn Erickson** said they belong to the citizens of the United States, and they are managed by Yellowstone National Park. **REP. CLARK** asked if we are in the process of adopting them as Montana wildlife. **Glenn Erickson** said this particular legislation merely removes state statutes that require the endangered wolf as currently classified under state statute to become a species in need of management. Once the U.S. Fish and Wildlife Service has determined they can be delisted, they will be listed as a species in need of management. **REP. CLARK** stated they would be Montana wildlife at that time.

**REP. BARRETT** asked if Idaho has this current legislation also. **Bob Fanning, Friends of Northern Yellowstone Elk Herd** said Idaho is not addressing the five points mandated by the delisting procedure and the endangered species act, section 4. What just occurred in Idaho is legislative frustration and a lot of political pressure. **REP. BARRETT** asked what the legislation was. **Bob Fanning** said HJM 5 calls for the immediate removal of all wolves from Idaho. He presented scientific reports from PhD's Hayes, Harestad, L.D. Mech, Valerius Geist, and a 14 year study that was just released on the wolf-elk predation dynamics in Banff Park, **EXHIBIT(fih65a02)**. He said that this 14 year study will verify his remarks and the warnings they give. **REP. CLARK** asked that copies be made for everyone. (Note - They were distributed at the next committee meeting).

**REP. GUTSCHE** asked how you will decide when the wolf no longer needs protection and is in need of management? **Rich Clough, Fish, Wildlife and Parks** said that determination will be based on population and distribution of wolves in Montana and will be done through a management plan that is a continuation of the advisory group. There is no doubt there will be excess wolves. The intent is recovery to a level that will guarantee its future, and at that point, they will be hunted and trapped. **REP. GUTSCHE** asked how FWP will decide whether it is a game animal or a furbearer. **Rich Clough** said he would defer to **Chase Hibbard** who said it will be under the commission's authority. The advisory committee came up with a detailed set of recommendations that was presented to Governor Racicot, to the department, and to Governor Martz. The guiding line is 15 packs. There is one set of management that applies below 15 packs, and from 15 packs and greater the flexibility goes up proportionately with the wolves. At some point, the commission will have to exercise their judgement that you can have a wide open hunting season in a particular part of the state, that the wolf is a furbearer and can be trapped, etc. **REP. GUTSCHE** referred to page 6, line 25 of

the bill where it says "following state delisting of the wolf, the department, or the Department of Livestock, pursuant to 81-7-102 and 81-7-103, may control wolves for the protection and safeguarding of livestock if the control action is consistent with a wolf management plan approved by both the department and the Department of Livestock". How will this work, since it says either department, but the management plan has to be approved by both? **Chase Hibbard** said FWP has \$110,000 available for predator control. That is done on Memorandum of Understanding (MOA) with the Department of Livestock. They in turn contract with wildlife services, a federal agency that flies helicopters and does this professionally throughout the United States. They agree on how the money will be spent, and how it will be used to control predators. They put it in the MOA, and the Department of Livestock/Wildlife Services is responsible for carrying it out.

**REP. GUTSCHE** referred to earlier testimony which mentioned issuing kill permits for problem wolves or wolves in general. Why would we have kill permits for wolves that weren't problem wolves? **Chase Hibbard** said these recommendations from his committee to the department will be up for public comment, to be finalized as early as next December. The recommendations include the issuance of kill permits to livestock producers which would broaden the statutory authority they will have as soon as they are delisted. Statutory authority allows taking animals that are threatening them or in the act of threatening them, their livestock, or domestic dogs. Kill permits would broaden that. For the wolf to exist, you have to meet the socially acceptable test, and when it is preying out of control, it is not socially acceptable. If a livestock producer is having trouble, they may qualify for kill permits which would allow them to kill a wolf even if it were not directly preying on livestock.

**REP. RIPLEY** asked if FWP envisions we will be transporting wolves to different parts of the state to even out populations. **Rich Clough, FWP** said he would envision that only as one option, i.e., if you are trying to take care of a problem area and you have another area, possibly on public land with suitable habitat that isn't occupied, where you do want wolves. Another option is kill permits, another is a hunting season. Once you reach delisting, the next criteria is to ensure that you don't re-list. **REP.**

**RIPLEY** asked if there are some areas of the state that are not suitable for wolves, where they may not survive. **Rich Clough** said there are some areas like that, particularly where there is a large scale cattle operation. They will not be accepted, and we should not expect them to be.

**REP. BARRETT** asked if we can say that our entire ecosystem is at risk, or has that been done. **SEN. GROSFIELD** said there is a lot of political pressure to delist the grizzly bear. The U. S. Fish

and Wildlife Service has developed a conservation strategy which says, assume we delist, then what? The question the three Governors raised was "when we do get there, then what"? The three Governors sent a letter to the Fish and Wildlife Service and asked to extend the comment period and decided to appoint a roundtable of five members from each state. They developed unanimous recommendations that went to the U. S. Fish and Wildlife Service. Groups involved in the meetings were U. S. Fish and Wildlife Service, U. S. Forest Service, and 3 state agencies. The recommendations that came out were different than those in the report.

**REP. BALYEAT** said you mentioned that Montana has to take three steps, do these also have to be taken by Idaho and Wyoming before we have any shot at delisting? **Chase Hibbard** said the 30 breeding pairs will be averaged among the three states, and they have to be maintained for three consecutive years. Each state has to have a management plan that has been accepted by the U. S. Fish and Wildlife Service, and Montana's plan has a good likelihood of meeting those criteria. The third thing is specific to Montana and has to do with some peculiarities in our law. **REP. BALYEAT** said, if Idaho refuses to "play", doesn't that leave us high and dry, even if we jump through all the hoops. **Chase Hibbard** said the preamble of the report says the Governors of each state have agreed that regional coordination and wolf management among the states, tribes, and other jurisdictions will be necessary, and recommends that it is in the best interests of the citizens of their respective states for wolf recovery and delisting to proceed as soon as possible. On the executive level, at least, there is agreement.

**REP. BALYEAT** asked **Bob Fanning, Friends of the Northern Yellowstone Elk Herd** what he would do with the bill if he were on the committee. **Bob Fanning** answered he would first make it clear that there are alternate courses of action other than jumping through U. S. Fish and Wildlife hoops. The committee has the authority to go directly to the Secretary of Commerce, the Secretary of the Interior, and have the Governor call for a session of the endangered species committee. We should seek a remedy for Montana regardless of what the other two states do. Regarding cost, if two states petition the Secretary of Commerce and the Secretary of the Interior, 90% of the cost could be absorbed by those federal agencies. This may be the most cost effective remedy that Montana has.

**Closing by Sponsor:**

**SEN. GROSFIELD** said that Sections 2 through 4 get the term "extermination" out of the Department of Livestock (DOL) code.

The DOL is not in the business of exterminating any species, and that is the only purpose of those two sections. The questions about carrying capacity are difficult and controversial. U. S. Soil Conservation Service in the 1950's and 1960's estimated that the appropriate carrying capacity for bison in the northern part of the park was about 300-500 and now we have seen numbers approaching 2,000. For purposes of this bill, it doesn't matter which biologist you are talking to. This bill is trying to get us to the point where delisting is possible. He said that as a cattle rancher this makes him very nervous because he knows there will be problems, especially with the wolf. The wolf expands their habitat in only months, which is much faster than the grizzly. He said he does not want to discourage the direct petitioning some have suggested. If the Secretary of the Interior was looking at that petition and this bill passed, it would be easier for them to provide the remedy that people want. If this bill doesn't pass, it could be a road block. We need to delist all three of these species in order to provide flexibility, and it has to be done in the context of preventing re-listing. The grizzly bear roundtable recommendations were 1) The state plan should be developed through a public process and should seek to ensure long term viability of grizzly bears and prevent re-listing. 2) Recognize and allow the natural expansion of grizzly bears beyond the primary recovery area which is basically Yellowstone Park. 3) They have to be managed under state plans. 4) The grizzly bear will be managed as a game animal, including allowing regulated hunting when and where appropriate. Those were the unanimous recommendations of the three Governors. It would be very similar with the wolf, and at the appropriate time, with the lynx.

#### HEARING ON SB 437

**Sponsor:** SENATOR MACK COLE, SD 4, HYSHAM

**Proponents:** REP. ALAN OLSON, HD 8, ROUNDUP  
Roger Knapp, Hysham, Self  
Lorna Karn, Montana Farm Bureau  
Bob Miller, Hysham, Self  
Jeff Hagener, Fish, Wildlife and Parks  
Brian Ratsburg, Sweetgrass Hills, Self  
REP. EDITH CLARK, HD 88, SWEETGRASS  
John Semple, MT Cattleman and MT Stockgrowers  
Jean Johnson, Montana Outfitters  
Ernest Ratsburg, Sweetgrass, Self  
REP. JOHN BRUEGGEMAN, HD 74, POLSON

**Opponents:** Jeff Barber, Montana Wildlife Federation  
Stan Frasier, Helena Hunters and Anglers

**Toby Day, Bozeman, Self**  
**Carol Gibson, Billings Rod & Gun Club, Self**  
**Rich Day, Missoula, Self**  
**John Gibson, Billings Rod & Gun Club, Self**  
**Ellis Misner, Self**

**Informational Witnesses:**            **Alan Charles, State Coordinator of**  
   **Block Management Program for FWP**

**Opening Statement by Sponsor:**

**SENATOR MACK COLE, SD 4, HYSHAM** said SB 437 would provide for the issuance of certain big game hunting licenses and permits for landowners, based on acreage owned or the need for game management. For deer and antelope, a maximum of two deer or antelope complimentary licenses may be issued. The bill covers someone who owns, is contracting to purchase, or is leasing at least 640 acres, has at least \$5,000 in agricultural receipts, and enters into a contractual public hunting access agreement with the department. Section 2 is for elk, with a maximum of one elk permit that can be issued. It is similar in scope, but requires the resident to have at least 1,800 acres. Section 3 provides supplemental game damage hunting licenses to residents and nonresidents. In hunting districts with limited permit quotas, a landowner may designate up to 75% of the resident license recipients. Hunters will pay the regular license price or an adjusted price set by the commission.

**Proponents' Testimony:**

**REP. ALAN OLSON, HD 8, ROUNDUP** said he supports SB 437. He said that we need to do something to help landowners with their game damage, and this will be a great public relations tool.

**Roger Knapp, Hysham, self** said he lives in the area of the fastest growing elk herd in the United States. They are not getting any management control and the herd will probably double this year. He had 50 head of bulls in his wheat field all summer and they did a lot of damage. They ate his hay stacks all winter. He and his neighbors met with FWP in November, but did not get any satisfaction toward upping the number of tags or permits. Last year his damage was from \$5,000 to \$7,000. Another neighbor lost between \$15,000 - \$20,000. The neighbor had a herd of 125 elk cows and calves in his fields. He said the propane pop gun that FWP brought out did not do any good, but SB 437 provides a good tool to issue more tags and cut the numbers down.

**{Tape : 2; Side : A}**

**Lorna Karn, Montana Farm Bureau** said they support SB 437 and it is a good management tool. She said Montana Farm Bureau has a policy regarding compensation to farmers and ranchers for damages done by wildlife. They feel this is one way that compensation will be accomplished. They like the amendment changing the acreage up to 640 acres.

**Bob Miller, Hysham, self** said he supports SB 437, it is good public relations, and we need better game management.

**Jeff Hagener, Fish, Wildlife and Parks** presented written testimony which he followed in his remarks to the committee, **EXHIBIT(fih65a03)**.

**Brian Ratsburg, Sweetgrass Hills, self** said he and his brother own a 40,000 acre ranch on the west butte in hunting district 401. Five other ranches are located there, and there are 400 head of elk running on that range. FWP and the landowners agree there should not be more than 150 head. Damages are estimated at \$100,000 per year, and the last two years they have tried to have special hunts. 17 tags were issued the first year and 18 were harvested. This year 120 tags were issued and 20 were harvested. They didn't have any say in the harvesting of these animals. He and other landowners feel they can assist by getting good hunters in to hunt these animals. SB 437 would increase sportsman's accountability to the landowners. In the last 10 years, they have had 20 sportsmen occasionally come and help with shipping and branding, just to ensure themselves the privilege of hunting on his ranch. All of them put in for elk tags in district 401 and none of them received a tag. On May 1, his family will move 450 pairs and 300 yearlings out to summer pasture elsewhere. Estimated cost to do that is \$80,000. This is necessary because there is no longer any pasture for the cattle to share with the elk, especially in this drought year. SB 437 is a good means to control over-sized game herds, as well as to reestablish relationships between sportsmen, landowners and FWP.

**REP. EDITH CLARK, HD 88, SWEETGRASS** said the Ratsburgs are neighbors. She said she concurs with everything he said. They are at least 250 pair less, because they run 400 elk and they like to stay in a pack. They have worked with FWP, they have had damage hunts, and they have never refused hunters. SB 437 would only help this problem.

**John Semple, Montana Cattlemen and Montana Stockgrowers** said they appreciate section 3 of this bill and concur with the previous proponents.

**Jean Johnson, Montana Outfitters and Guides** spoke as a proponent and said that allowing nonresidents to participate in game damage hunts is a good idea. She said that in the title on line 7 of the bill, the words "or leased" should be added, because it just says "owned". She asked where the licenses will come from, if they are part of a quota, or if they are newly created.

**Ernest Ratsburg, Sweetgrass, representing Montana Graingrowers** said he concurred with everything his brother and **REP. CLARK** said. SB 437 will benefit them as well as the sportsmen.

**REP. JOHN BRUEGGEMAN, HD 74, POLSON** said this is a good faith effort between FWP, landowners and sportsmen. The hunting season is 1½ months or less and that is not enough to manage the number of elk that we have. In the Wolf Creek area where the carrying capacity is 500 animals, they are seeing over 1,000 animals. They are creating havoc with the hay, with the hay crops and with a lot of the grain crops in the area. This is something that needs to be addressed now. The agricultural community is losing a lot of money because we don't have a year-round management approach in place. This is a good bill because it also involves sportsmen. They only had kill permits before, and the rancher or FWP had to dispose of the animal. Now the rancher can bring people in to take care of it, and people who may not have filled their tags in the regular season can get their game. He is glad to see some cooperation.

#### **Opponents' Testimony:**

**Jeff Barber, Montana Wildlife Federation** said they sympathize with the proponents, but this bill goes too far. He said that only one section of the bill deals with game damage, and the fiscal note just says "unknown". Administrative costs on this bill could be enormous. There are 23,000 landowners that own 640 acres or more; that is potentially 46,000 tags in section 1. People will be applying for these tags, and they won't get them because the department doesn't have enough people to do the contractual hunting agreement. They will be back next session to mandate that they get these tags, or the contractual public hunting agreement part will be taken out of it. The same thing applies to section 2. He states that these two sections are not tied to game damage, they are just complimentary tags if you own a certain amount of land and make a certain amount of income off of it. He is concerned that those sections will not be good for either sportsmen/department relations, or landowner/department relations because if they kept it at 160 acres and did the contractual agreement that isn't a big enough area to do much good for the sportsmen. They will be giving tags away with no real access for the sportsmen. MWF feels that mechanisms are



already in place to deal with the problem. They have block management to open public land. There are two bills going through the session; SB 285 is giving block management more money, and HB 306 is providing more money to block management. MWF feels that is a more appropriate way of opening up land. They don't want to confuse a system that is working well already. Another problem is not knowing where the elk tags are coming from, whether it is from resident sportsmen, nonresident sportsmen, or out of the outfitter pool. MWF feels that the landowner who does not allow public access should not receive special licenses to deal with the problem. They feel that a minimum of 50% of the tags allocated in section 3 should go to the public. He said that there isn't enough detail in the contractual public hunting access agreement. MWF feels that this issue should more appropriately go before the Private Lands Public Wildlife Council. MWF has discussed the issue with FWP and Governor Martz and drafted a study resolution that they hope to get introduced next week.

**Stan Frasier, Helena Hunters and Anglers Association** said the access program already in place under block management seems to be working well. They have more people wanting to get into it than they have money to fund it. Special hunts and game damage assistance are already available. This bill is moving toward the privatization of wildlife. If there are too many deer and elk for the agricultural people to deal with in these areas, the mechanism is for FWP to increase the hunting quotas in those areas and manage these numbers through the proven method of public hunting.

**Toby Day, self**, spoke as an opponent to the bill and asked what is meant by a "complimentary" license. He also pointed out that in FWP statutes a single resident can't hunt two elk in one season. He said that the word "receipts" on line 21 is confusing. Referring to page 1, line 23, he said he does not know of any tags ever being given to a corporation or to a ranch just because they own land. Regarding page 2, line 13-17 which is an agreement between the landowner and the department, he asks how the public will know about all this so they can comply. He said that section 3 is a blanket law across the entire state, when only the areas of the Bull Mountains and the Sweetgrass Hills need addressing. He also directed the committees attention to the technical notes on the fiscal note and said the bill doesn't make sense.

**Carol Gibson, a member of the Billings Rod and Gun Club and the Montana Wildlife Federation** spoke in opposition and presented written testimony, **EXHIBIT(fih65a04)**.

**Rich Day, Missoula, self** said he opposes SB 437. He said it appears we are trying to solve a problem that doesn't exist, except in a few isolated spots. There are many tools available for landowners and the department to work together to take care of over populations on private land. He is concerned that anyone who is a landowner with the right amount of acreage can get a permit, even a nonresident. He said the fiscal ramifications to this have been over-looked. He pointed out that if many landowners took advantage of this, that it would translate into several hundred thousand dollars loss of revenue to FWP. He said that the contractual public hunting access agreement is poorly defined. It sets up undue expectations from landowners, and ignores the principle of equal access to a wildlife resource. South Dakota had a situation similar to this with Canadian geese several decades ago. Numerous nonresidents bought or leased prime goose hunting land and were able to get goose hunting permits that they would otherwise have been unable to get. The result severely limits the number of nonresidents who can get goose hunting permits. He asked the committee to be mindful of the consequences when considering this bill.

**John Gibson, a member of the Billings Rod and Gun Club** presented written testimony which he followed in his remarks to the committee, **EXHIBIT(fih65a05)**.

**Ellis Misner, self**, sent written testimony opposing SB 437 which was given to the committee, **EXHIBIT(fih65a06)**.

**Questions from Committee Members and Responses:**

**REP. CLARK** asked which license pool the limited number of additional tags would come from in section 1. **Jeff Hagener, FWP**, said they would still be looking at biological quotas for those areas. They are not adding new tags for landowners. In areas with limited quotas, not everyone will get one; they may have to go to an every other year, or every third year system. **REP. CLARK** said now you will have to determine if you have 100 tags available, and there will be competition among landowners for tags. How will you determine what percentage of the tags you will allow for landowners? How will the public be told that tags which have been available to them in the past will no longer be available to them? **Jeff Hagener** said they don't have all the answers. They will have to go through procedures to establish the administration of the program. Also, in reply to several statements made earlier, they do currently give complimentary tags in the block management program. **REP. CLARK** asked if FWP supported the interim study by PLPW advisory committee. **Jeff Hagener** said it appears that is a good avenue to use. There is still a lot of confusion between **REP. CLARK's** bill and **SEN.**

**COLE's** bill. If both bills pass, two programs could be established. There is merit to this concept, and it needs to be looked at. **REP. CLARK** asked if sections 1 and 2 tags are available throughout the district, and not just on the landowner's property, when the landowner receives the tag. **Jeff Hagener** said it is throughout the district.

**REP. CLARK** asked if Montana Outfitters would still support the bill if some of the landowner tags in a limited tag area came out of the outfitter guaranteed B11 licenses. **Jean Johnson, MOGA** said no, and maybe the PLPW council is the place for the bill to go. **REP. CLARK** asked if she could visualize any fair way to distribute licenses that will be taken out of the existing pool when you have public hunters, nonresident hunters that get their licenses from the general pool, and nonresident hunters that get their licenses from the outfitter guaranteed license pool. **Jean Johnson** said guaranteed licenses are not a part of this. The licenses they are talking about are the special permits that they set in areas where they are needed. Current distribution is 90% to residents, 10% to nonresidents. Sections 1 and 2 don't appear to allow nonresident hunting, and those would come out of the resident's portion. Section 3 appears to be brand new; kill permits or something like that. **REP. CLARK** asked what she thinks the folks in those pools will say. Nothing in the bill says that outfitter guaranteed licenses are immune to this provision. **Jean Johnson** said when this comes before the FWP commission everyone would be out in force to protect their own interests.

**REP. RICE** asked for a description of the public hunting access agreement. **Jeff Hagener** said it would probably be a one time issue annual agreement which would allow the complimentary tag to leave the landowner. The contractual portion would allow public hunting and could establish the number of hunters and hunter days, time periods, etc. **REP. RICE** asked if those stipulations were already worked out. **Jeff Hagener** said they would be worked out on an individual basis, depending on the habitat and the number of animals available.

**REP. DEVLIN** said he has questions about the contractual agreement. Do you see the possibility where someone could get their full block management payment and a complimentary ticket also? **Jeff Hagener** deferred to **Alan Charles, State Coordinator of Block Management Program for FWP** who said that without the amendments and based on the proposal and the current block management rules, the answer is no.

**REP. RIPLEY** said in regard to comments about the loss of revenue to FWP, have you considered the loss of revenue for the

landowners? **Rich Day** said no, he was just looking at the bill and doing a fiscal note on that. **REP. RIPLEY** asked about comments about a special class of people and maybe opening it up to the motel owners. Do the motel owners have any loss of revenue, is that the difference between the different classes of people? **Rich Day** said that it could be, but it may not have been a good analogy.

**REP. GUTSCHE** said one of the opponents said there could be 46,000 tags issued, what if there were just 5,000 tags requested? The fiscal note says the department will absorb the cost of the contractual agreements. How can the department do this at no cost? **Jeff Hagener** said there will be some administrative cost. The fiscal note is based on the original bill that had the larger acreage, and they viewed it as a lot less people coming in. They do have block management coordination people in their regional offices and they felt they could work it into that program. **REP. GUTSCHE** said, now the bill has been re-written with smaller acreage, etc. Do you still believe it won't cost the department anything to help administer this? **Jeff Hagener** said with the amendments on the bill, there will be more administrative cost involved. They have not been asked to assess that.

**REP. GUTSCHE** referred to technical note #2 on the fiscal note, "It is not clear if the intent is to allow a landowner who owns property that might span multiple hunting districts to hunt in all districts on one license or permit". Please address what you think this covers? **Jeff Hagener** said it has not been addressed and is still a question. **REP. GUTSCHE** referred to technical note #6, "It is unclear if an individual can harvest an elk, then receive another elk license under the damage hunt portion of this program and potentially harvest a second elk in the same license year. What is the intent of the legislation? **Jeff Hagener** said FWP understands it would be one elk per year, there would not be an allowance for two.

**REP. GUTSCHE** asked why we should allow landowners special permission to hunt where there is no game management problem. **SEN. COLE** said what they are trying to do is open up more land for hunters who want to come out and hunt and work with landowners. If they are agricultural people and enter into a contractual public access hunting agreement with FWP, they would receive these complimentary licenses. **REP. GUTSCHE** asked if landowners participating in this program already have to have their land open to public hunting. **SEN. COLE** said no. In order for them to get a complimentary license, they have to open their land up to public hunting through the access agreement.

**REP. GALLUS** asked if the department could enter into a contractual public access hunting agreement with a landowner for this one tag and that landowner still maintain a private contract with a commercial outfitter that basically ties that property up. **Jeff Hagener** said FWP's perception of that would be no, because they would then have another agreement and that is not fair to the public. **REP. GALLUS** said through statutory administrative rule, there is a "check" in place currently that would prevent the department from entering into an agreement with the landowner, if the landowner has a private agreement with a commercial outfitter. Is that rule written somewhere? **Jeff Hagener** said that is a rule in their block management agreement. They would be looking at that as a template. There is no specific rule to refer to at this point.

*{Tape : 2; Side : B}*

**REP. SHOCKLEY** said this is all permissive; you don't have to issue these licenses, but only if you want to, so in an area without enough permits, you just wouldn't issue them, right. **Jeff Hagener** said that is FWP's understanding of it, yes.

**REP. BARRETT** said this is not needed everywhere and not every year. It is where there is damage. The reason it said receipts of \$5,000 is because what you do for a living is being hurt by wildlife damage. She asked if any of the opponents have ever had wildlife impact their business. **Toby Day** said there was someone he worked for in Bozeman with a three acre market garden that had damage. **REP. BARRETT** explained that she only wanted to hear a personal story. She said that there is a need for this, but only in certain places and under certain circumstances.

**REP. BALES** asked if a landowner should be entitled to some compensation for allowing public access. **John Gibson, Billings Rod and Gun Club** said yes. **REP. BALES** asked if giving a tag was a form of compensation, and doesn't it say here that they have to give access to get that tag. **John Gibson** said yes, but the access is stated as a contractual agreement, and that is poorly defined. It could mean that you could come for two days and hunt does. It isn't exactly public hunting. **REP. BALES** said the statute for block management is equally undefined. **John Gibson** said he served on that committee when they put together the rules for block management. If there is some restriction on species and season, the contractor or the cooperator receives less money, but he still receives compensation.

**REP. CLARK** asked about concerns in section 1 or 2. Is it possible that all licenses in a given district could go to the

landowners, and none would be left for the public? **Jeff Hagener** said no, because you have to have a contractual public hunting access agreement to allow that tag and that means the public has to be given some opportunity. He said it was his understanding that it would be an equal opportunity. If they are giving a deer tag, it is a deer that is also public opportunity.

**REP. CLARK** asked if there would be a problem with inserting a contractual public deer and antelope hunting access agreement with the department in section 1, so that it is clear that when we are giving away deer and antelope licenses, they are also contracting for deer and antelope licenses. **SEN. COLE** said he would be happy to work with the committee on whatever things would make this better, but he feels people are reading things into the bill. For example, Line 16 says "may issue", that does not mean they have to issue.

**REP. CLARK** referred to page 4, lines 5-7 where it says: "In a hunting district with limited permit quotas, a landowner may designate up to 75% of the resident supplemental game damage license recipients". It does not say that the landowner is limited from charging a fee for those permits, or for designating 75% of those permits to the highest bidder. Is that a possibility? **Jeff Hagener** said FWP feels this is not an allowance for an access fee type agreement. He said that he wants to clarify something. In section 3 is a circumstance that applies when they have game damage that is outside of regular seasons. This requires eligibility for game damage assistance in 87-1-225 which requires public hunting. They don't put game damage hunts or kill permits out on areas that are closed to public hunting.

**REP. CLARK** asked if there would be a problem with adding the caveat that this would allow the landowner to designate 75% of the residential supplemental game damage license recipients, as long as they are not charging a fee or getting any type of compensation for allowing that hunting or distributing that permit. **Jeff Hagener** said it was FWP's impression that would be there and is not a problem with them.

**REP. GUTSCHE** referred to page 1, line 22. Should this program be offered only to those landowners who voluntarily, already have their land open for public hunting. This looks like an incentive for those landowners who don't allow public hunting currently.

**SEN. COLE** said he doesn't see a problem with that. This is something that FWP still has control over, and the important thing is that this is not mandatory. **REP. GUTSCHE** asked about a private landowner who currently is not allowing public hunting. Why wouldn't they open up their land to public hunting if they had a huge elk herd on it, to help manage it? **SEN. COLE** said they would have to go through every land owner individually. In

some cases, they have had some very bad experiences with people who ran all over the land, left gates down, shot their cattle, people that don't respect landowners. He has hundreds of examples of sportsmen who have ruined the opportunities for real sportsmen. They are trying to give a little incentive to those people that take care of that game and suffer damages all year.

**Closing by Sponsor:**

**SEN. COLE** said this is about the alleged sportsmen who came here objecting to trying to work with landowners. It is time we get something for landowners and those people who are taking care of these animals all year. They should receive some benefit for allowing people to go over their land, over their grass, leave the gates open, etc. Apparently some people think they have a special right to go wherever they want to. These are not public lands, they are not forest service lands, or BLM lands. He wants to get better management and control of game and in turn have some way for the people that feed them, whether it is in their grain fields, their hay bales, or just grass. It is time to get a better balance.

**EXECUTIVE ACTION ON HB 634**

**Motion:** **REP. THOMAS** moved that **HB 634 DO PASS.**

**Discussion:**

**REP. STEINBEISSER** said they have a similar situation at lower Yellowstone irrigation project. Fish ladders are expensive, and under the endangered species act, it is up to the federal government to help fund these. He said that is what they are doing in his district. A fish ladder, a fish screen and a canal will cost \$5 million. The state of Montana or the water users can't afford that kind of money. He moved to table the bill.

**Motion/Vote:** **REP. STEINBEISSER** moved that **HB 634 BE TABLED.**

**Motion carried 10-9 with Barrett, Facey, Fritz, Gallus, Golie, Gutsche, Jent, Shockley, and Tramelli voting no.**

**ADJOURNMENT**

Adjournment: 6:25 P.M.

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REP. DANIEL FUCHS, Chairman

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LINDA KEIM, Secretary

DF/LK

**EXHIBIT** (fih65aad)